IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 518 of 2004

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF CENTRAL EXCISE& CUSTOMS, VADODARA-I
Versus
TRANSPEK INDUSTRY LTD.

==========

Appearance :
MR JITENDRA MALKAN for Appellant(s) : 1,
MR DHAVAL SHAH for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 30/09/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. On 30th August, 2005 notice was issued for final disposal. Mr.Dhaval Shah, learned advocate, appears on behalf of the respondent-assessee.

2. As can be seen from the impugned order of the Tribunal it has dismissed the appeal of revenue before it solely on the ground that the denial of credit of High Speed Diesel Oil during the period June 1997 to September, 1997 cannot be upheld in view of the decision of Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Hyderabad Vs. Associated Cement Companies Limited*, 2003 (157) ELT 12 (SC) and considering that the period herein was before amendment to Rule 57A of the Rules.

3. After hearing the learned counsel it transpires that by a subsequent decision rendered by Hon'ble Supreme Court between the same parties viz. *Commissioner Central Excise, Hyderabad Vs. Associated Cement Companies Limited*, 2005 (180) ELT 3 (SC) the Apex Court has allowed the review petition and held that the earlier view was not correct. Hence, ***ADMIT***. The following substantial question of law arises for determination:

> "Whether the Tribunal was justified in law in holding that the assessee was entitled to credit of High Speed Diesel Oil during the period June 1997 to September, 1997 on the basis of a decision which is no longer good law ?"

4. It is not even disputed on behalf the respondent-assessee that the decision on which the Tribunal has placed reliance has since been held to be no longer good law in review proceedings by the Apex Court between the same parties. In the circumstances, it is not necessary to enter into any discussion on merits of the controversy otherwise. The impugned order of the Tribunal, therefore, suffers from a legal infirmity and cannot be permitted to stand.

5. The question is, accordingly, answered in the negative i.e. in favour of the revenue and against the assessee.

6. The appeal is, accordingly, allowed. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

***

*Bhavesh**